



May 22, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2001-2113

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147486.

The Texas Department of Transportation (the “department”) received a request for “all or part of the Hazmat report forwarded . . . to Traffic Operations Director, Carlos Lopez.” You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As you acknowledge, section 552.022 of the Government Code provides, in relevant part, that a “completed report” prepared for the department is not excepted from required public disclosure unless “expressly confidential under other law.” Gov’t Code § 552.022(a)(1). You do not dispute that the materials submitted to this office as Exhibit B constitute a “report” as that term is used in section 552.022(a)(1). You assert, however, that the report is not subject to section 552.022 because it is not completed:

[t]he draft routing proposal . . . was prepared by [the department’s] San Antonio District and is currently being reviewed by several [department] divisions in Austin and by the Department of Public Safety. . . . [I]t is a draft that has not been finally reviewed and approved by [the department] or by the Department of Public Safety, and thus it is still very much a work in progress. When it is completed and the final version is approved, [the department] will release it; until then, [the department] should be permitted to complete it with intraagency candor and free internal discussion.

On the basis of your assertions, we conclude that section 552.022(a)(1) is not applicable. We thus address your argument under section 552.111.

Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990).

In support of your contention that the information at issue pertains to policymaking by the department, you state that the report “is an effort to weigh all the competing concerns in developing appropriate routes for non-radioactive hazardous materials through highly populated Bexar County. It has been developed over a long period of time with extensive input from many persons, including input received at public hearings.” Based on this representation and our review of the information at issue, we conclude the submitted information pertains to policymaking by the department. Because you further represent that the information is in draft form and that the document in final form will be released to the public, we further conclude that you may withhold the submitted draft document under section 552.111 of the Government Code. We rely on your representation that the document in final form will be released to the public.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 147486

Encl. Submitted documents

cc: The Honorable Bob Anderson
Mayor
City of Castle Hills
209 Lemonwood Drive
Castle Hills, Texas 78213-2410
(w/o enclosures)